



#18/ Amct E  
Bentley  
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Application No. 09/875,553

### AMMENDED CLAIMS

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- 1) A cylindrical duck nesting house for ducklings comprising:
    - (a) a canister and removable lid with handle, said canister and removable lid made of white, plastic material;
    - (b) an entrance and egress hole in said canister;
    - (c) a mesh grid climbing ladder secured to the bottom of said canister and secured to the vertical inside of said canister whereby said ducklings can exit the nest upon hatching.
  - 2) A cylindrical duck nesting house as claimed in Claim 1 further comprising: a round, hollow pole made of white, plastic material; a water closet fitting attached to the top of said pole to secure said pole to bottom of said canister; an end cap fitted to the bottom of said pole whereby said pole can be planted in a wetlands area without water seepage to inside of pole chamber.
  - 3) A cylindrical duck nesting house as claimed in Claim 1 further comprising: a round, segmented pole made of white plastic material; said pole including a top pole segment and a bottom pole segment; a water closet fitting attached to the top of the top pole segment to secure to the bottom of said canister, the said top pole segment sliding inside the bottom pole segment of slightly larger diameter; stabilizing collars encircling the bottom end of said top pole segment; an end cap fitted to the bottom of said bottom pole segment; an end cap on the top of the said bottom pole segment whereby the said bottom pole segment can be permanently planted in shoreline areas and temporarily capped with said end cap at the end of the nesting season.

## ARGUMENT

Claim 1 has been amended to provide basis for the said ducklings.

A "water closet fitting," as used in Claims 2 and 3, is the term one would use if purchasing such materials at a local hardware store. It is an adapter used to attach the end of a round pole to a flat surface.

Wade (3,643,631) describes a bird house constructed with a double wall to achieve desired cooler interior temperature conditions while still using darker colored heat absorbing materials on the exterior. The heated air from the sun comes through the outer wall but is reflected by the finish on the interior wall. Wade describes the space between the two wall panels as creating a chimney effect that allows the heated air to escape through vent holes at the top of the bird house. The purpose of the two wall panels is to ensure that dark, heat absorbing colors and finishes can be used on the outer walls. The present invention is an improvement over Wade. The present invention has only one wall, made of white plastic. The white color is essential as the white color reflects the heat from the sun rather than absorbing the heat as does the dark color of the Wade bird house. The present invention is made of plastic, which does not absorb heat as does the Wade bird house made of metal. The present invention is made of one eighth inch thick plastic which ensures the temperature inside the wood duck house is most conducive for egg hatching. The present invention is constructed with white plastic material which distinguishes it from Wade, as the two materials have opposite heat absorbing properties. There is no need for a two wall construction in the present invention as the one wall solves the problems inherent in the Wade bird house.

The Wade bird house is made with two sets of walls facing each other creating a box with four corners. The structure of a boxlike bird house, such as Wade, creates easy access for the natural predators of wood ducks. The outside corners of the Wade bird house provide grasping places for predators to hold onto while the predator reaches in through the entrance hole and takes eggs from the nest. The cylindrical shape of the present invention is an improvement over Wade as the present invention has a smooth, round surface with no corners for a predator to grasp. The shape of the present invention solves one of the main problems of the prior art boxlike bird house such as Wade.

The Wade metal birdhouse further describes a wire screen mesh used by birds to exit the nest. Birds generally are not considered water fowl, that is birds do not generally spend time in the water. Wood ducks are migratory water fowl, a species that spend most of their time in the water. A wood duck brings water into the nesting box because it flies into the nesting box from a pond with wet feathers and wet feet. Thus, the wood duck deposits water inside the nesting compartment everyday. The Wade metal wire screen mesh would rust and deteriorate from the corrosion caused by wood ducks making a daily wet entrance from a wet pond. The mesh grid climbing ladder of the present invention is an improvement over Wade in that it is made of ultraviolet plastic and will not rust and deteriorate. Birds generally remain in their nest until they grow feathers and can fly from the nest. That is not the case for wood ducks. Wood ducks leave the nest one day after hatching from the egg shell. A one day old wood duck has only soft down fuzz on its body. The one day old wood duck does not have feathers and cannot fly from the nest. It will take several months for the wood duck to grow feathers and be able to fly. The wood duck is the only species with a small hook on the tip of its beak. The wood duck uses this hook to break open the egg shell from the inside. Then within a day the wood duck uses the hook on its beak to

grab onto the mesh grid climbing ladder of the present invention and pull its way up to the egress hole and jump out of the nesting compartment. The openings in the mesh grid climbing ladder of the present invention are wide enough to allow the wood duck to use his webbed feet to help propel him to the egress hole. The wide openings in the mesh grid of the present invention also allow use by a duck's wide beak. Birds generally have narrow beaks and narrow feet. Birds generally do not bring water into the inside of the nesting compartment. If the mesh grid climbing ladder were made of metal as in Wade, it would rust from water brought in by the wood duck. The nesting wood duck mother must leave the nest everyday to find her own food on the water. The nesting wood duck mother comes back wet to the nest and brings the wet inside the nesting compartment on a daily basis. The water brought inside by the wood duck will rust the Wade metal wire screen mesh and it will likely deteriorate after one season. With a deteriorating wire screen mesh the wood ducklings would be trapped inside the nesting compartment, unable to fly out. It is essential that wood ducklings have a dependable climbing ladder to exit the nesting compartment. The present invention solves the problems of the Wade metal wire screen mesh by using a plastic mesh grid climbing ladder that will not deteriorate due to water in the nesting compartment.

Bennett (5,740,762) describes a round multi-compartment bird house that can be re-assembled as a bird feeder. Each nesting compartment is pie shaped and the bird house is constructed around a central pole. There are multiple nesting compartments and multiple ingress and egress holes. The Bennett bird house is made of PVC plastic with a pole of steel. The Bennett bird house is made especially for purple martins, a bird species that prefer to live in large colonies with one another. The male purple martin stays with the female throughout the egg incubation process and through the process of raising the new babies. The male purple martin brings food to the female while she lays on the eggs. The male and female purple martin share the same nest until the eggs are hatched. The male purple martin also protects the female and the eggs by fighting off all predators. The present invention is distinguished from Bennett in that it is a single round nesting compartment especially for migratory water fowl such as the wood duck. Unlike the purple martin, the wood duck male is not involved with the female at any time during the nesting period or raising the new ducklings. The wood duck female finds a suitable nesting site herself and lays her eggs. The wood duck female sits atop her eggs most of the day. She leaves her nest once per day, for about an hour, to exercise and forage for food. The wood duck female must fight off all predators while she sits atop her eggs. It is imperative that a nesting site be difficult for predators to gain access. The Bennett birdhouse is not predator proof because it doesn't need to be. The Bennett bird house was made for purple martin species whose nesting habits allow the birds to defend their own nests from predators. The present invention has only one entrance and egress hole through which the wood duck female, inside the nest, can fight off any predator coming through the hole. The distance from the bottom of the entrance hole to the bottom of the canister of the present invention is approximately nine and one half inches. This distance is longer than the reach of any known predator, commonly the raccoon and squirrel. If a raccoon were to climb up to the nesting compartment of the present invention, it would be unable to reach up to the entrance hole because its arm span is shorter than nine and one half inches. The smooth, round surface of the present invention makes it impossible for the raccoon to grab onto anything for leverage. The present invention is distinguished from Bennett in that it is a single nesting compartment. The present invention is further distinguished from Bennett in that the distance from the bottom of the entrance hole to the bottom of the canister is approximately nine and one half inches which provides protection from predators for migratory waterfowl.

Sonnek (6,405,679) describes a telescoping pole used as a support for a bird house. The present invention is distinguished from Sonnek in that it is not a telescoping pole. The pole of the present invention is a single segment sealed at both ends so that water cannot enter the inner chamber of

the pole. The pole of the present invention is used in ponds and wetland areas where the water freezes during the cold winter months. The pole of the present invention prevents water from seeping into the inner chamber, the water freezing, expanding, cracking the plastic and making the pole inoperable. The pole as described by Sonnek has several openings for air leakage and uses a pin through two holes in the pole to keep the pole at its most upright position. The Sonnek pole would allow water to seep into the inner chamber. The Sonnek pole was not made to be planted in a wetlands area as is the present invention. The present invention is further distinguished from Sonnek in that the diameter of the pole in the present invention is approximately 3 inches. The pole of the present invention was made with a wide diameter to make it difficult for predators to climb the pole. The common predators, raccoons and squirrels, do not have an arm span that would enable them to wrap their arms around a pole of this diameter and climb the pole. The pole of the present invention helps deter predators for nesting wood ducks. The pole of the present invention does not need to be raised and lowered as is the Sonnek telescoping pole.

The pole of the present invention is further distinguished from Sonnek in that it has a mounting device for land application. The present invention has a second pole segment of approximately eighteen inches long that is planted in the ground away from a wetlands area. This second segment acts only as a holder, or mounting device, for the first segment. The second segment of the present invention is planted approximately seventeen inches deep into the ground. During the nesting season the first pole segment is placed inside the second pole segment. At the end of the nesting season the first pole segment and wood duck house can be removed from the second pole segment. The second pole segment can remain planted in the ground. A cap is used to cover the opening of the second pole segment to prevent dirt and debris from entering this mounting device until the next nesting season. The two segments of the Sonnek telescoping pole were each integral parts of the pole to reach its full height. The second segment of the pole of the present invention is only a mounting device for land application of the first pole segment.